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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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12
13 PHILLIP NORRIS THOMPSON,

14 Petitioner,

15 v.

16 JOSIE GASTELO, Warden,

17 Respondent.
18

Case No. CV 17-4081 SVW (MRW)

**ORDER DISMISSING SUCCESSIVE
HABEAS ACTION WITHOUT
PREJUDICE**

19 The Court summarily dismisses this action without prejudice pursuant to the
20 successive habeas petition rule under 28 U.S.C. §§ 2243 and 2244.

21 * * *

22 1. Petitioner is a state prisoner. He is serving a life sentence based on
23 his 1999 conviction for first degree murder.

24 2. Petitioner previously sought habeas relief in this Court related to that
25 conviction. The Court denied the habeas petition on the merits in 2005.

26 Thompson v. Garcia, No. CV 02-2492 GHK (FMO (C.D. Cal.) (Docket # 19). The
27 United States Court of Appeals for the Ninth Circuit declined to issue a certificate
28 of appealability. (Docket # 29.)

1 3. Petitioner’s current action argues that a recent state court judicial
2 decision regarding California’s jury instructions for murder liability (People v.
3 Chiu, 59 Cal. 4th 155 (2014)) impacts Petitioner’s long-concluded criminal case.
4 The petition was not accompanied by a certificate from the Ninth Circuit
5 authorizing a successive habeas action pursuant to 28 U.S.C. § 2244(b). Petitioner
6 failed to disclose the existence of his earlier habeas action in this Court. (Petition
7 at 7.)

8 4. The Attorney General subsequently moved to vacate the order
9 requiring it to respond to the petition and to dismiss the action as successive.
10 (Docket # 8.) Petitioner filed a short response to the motion that failed to identify
11 any legitimate reason under federal law why the Court should consider this second
12 habeas action.

13 * * *

14 5. If it “appears from the application that the applicant or person
15 detained is not entitled” to habeas relief, a court may dismiss a habeas action
16 without ordering service on the responding party. 28 U.S.C. § 2243; see
17 also Rule 4 of Rules Governing Section 2254 Cases in United States District
18 Courts (petition may be summarily dismissed if petitioner plainly not entitled to
19 relief); Local Civil Rule 72-3.2 (magistrate judge may submit proposed order for
20 summary dismissal to district judge “if it plainly appears from the face of the
21 petition [] that the petitioner is not entitled to relief”).

22 6. Under federal law, a state prisoner is generally required to present all
23 constitutional challenges to a state conviction in a single federal action. “Before a
24 second or successive [habeas petition] is filed in the district court, the applicant
25 shall move in the appropriate court of appeals for an order authorizing the district
26 court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). A prisoner must
27 obtain authorization from the Court of Appeals to pursue such a successive habeas
28

1 petition before the new petition may be filed in district court. Id.; Burton v.
2 Stewart, 549 U.S. 147, 156 (2007) (district court without jurisdiction to consider
3 successive habeas action when prisoner “neither sought nor received authorization
4 from the Court of Appeals before filing”).

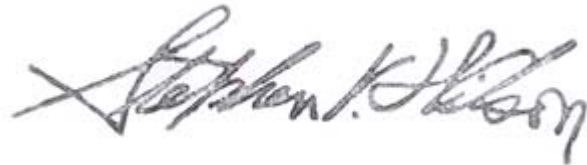
5 7. The current petition challenges Petitioner’s 1999 murder conviction.
6 The Court previously denied habeas relief regarding that criminal conviction.
7 (CV 02-2492.) Petitioner failed to obtain permission from the federal appellate
8 court to bring the present habeas action. On this basis, the current petition is
9 subject to summary dismissal. See 28 U.S.C. § 2244(b); Burton, 549 U.S. at 156.

10 * * *

11 Because the Court does not have jurisdiction to consider Petitioner’s claim,
12 the action is DISMISSED without prejudice as successive.

13 IT IS SO ORDERED.

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16 Dated: 11/15/2017



HON. STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

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19 Presented by:



HON. MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE